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MORNING SESSION

Saturday, April 24, 1909.

The meeting was called to order at 10 o'clock a. m. by the President, Hon. Elihu Root.

Mr. Root. The subject is "the constitution and powers which an international court of arbitral justice should possess," and the first paper will be read by Hon. T. E. Burton, the Senator from Ohio.

ADDRESS OF HON. THEODORE E. BURTON,
OF CLEVELAND, OHIO.

Mr. President and Gentlemen of the Society: I want to congratulate the American Society of International Law upon its membership and influence and upon the cause in which its efforts are enlisted.

It is plainly evident that the growth of municipal as well as of international law has been attended by a constant struggle between force and justice, or more popularly speaking between might and right. In a crude or incomplete state of society the strongest must rule and the strong are able to prevail over the weak.

A second consideration is that with the growth of ideas of justice and of respect for authority it is necessary that laws and regulations be framed which have precision and that degree of wisdom which commands authority. It is not sufficient that aspirations for the rule of law and order should suggest the observance of right principles, but these principles must be formulated.

The development of municipal law has been retarded by ever present obstacles: first, from the preponderant power of might and privilege, and second, from the absence of established and accepted principles expressed with certainty and authority. As illustrations of the growth of law among individuals, and between individuals and the state, there were numerous codes and decrees of which the Code of Justinian in the sixth century was the most perfect embodiment of legal principles up to that time.

In the dark ages following, the laws contained in this code, though

possessing much vitality and influence, were neglected partly because in a time which has been termed an area of vileness and violence there was no opportunity for the weak or less favored to assert their rights against those who were more powerful; and partly because of the lack of an intelligent understanding of the rules and principles which should prevail in the settlement of disputed questions. There were, however, notable instances in this earlier day of the triumphs of law and morality. In the 9th century King Lothaire of Lorraine, acting under the authority of subservient prelates, put away his wife and took to himself another woman. Pope Nicholas I declared that his action was contrary to the laws of God and man and insisted upon his restoring his wife to her proper position as his queen. The brother of King Lothaire, the Roman Emperor, Louis, for the purpose of over-awing the Pope, led an army to the very gates of Rome and indeed quartered his troops within the walls of the Eternal City. But Pope Nicholas, confident of his position, insisted upon the stand which he had taken and compelled King Lothaire to dissolve the unlawful connection which he had formed and do penance for the wrong he had committed. There was here a reliance upon the justice and righteousness of the position which the Pope had assumed and moral forces triumphed.

Through centuries the law between individuals has been a plant of gradual growth which has now, however, become fixed in all civilized nations. International Law is necessarily of slower development. Pride of nationality, the clash between different political systems, stimulated by a spirit of patriotism for the sake of country, have postponed the inevitable time when all nations must become subject to universal laws and regulations. The general adoption of the law of nations has not been aided by a common opinion that proper relations between independent countries must have a transcendental origin, such as the divine law, or the law of nature or of reason.

The establishment of international law, though based upon essential principles which should be universally recognized, must have its beginnings in compact between distinct sovereignties. Its source is essentially the same as the theory of Rosseau and others that submission to government by individuals is a matter of contract.

Progress toward this end is promoted in the first instance by an increasing realization of a solidarity of interests among all nations. This is reinforced by the extension of commerce, by the desire for easy access by those of one nation to the territory of all others. The interest of one nation, it is recognized, is in a very important sense the interest of all, and wars and collisions between them should be prevented by a spirit of good will and of justice.

In the second place, with the growth of intelligence and an appreciation of the burdens and horrors of war, it is coming to be more and more accepted that the same general principles and methods which govern the relations between individuals should in equal degree control the relations between nations. It is thus an inspiring prospect which presents itself to those who seek to maintain and increase the binding force of international law between all the countries of the earth.

Great progress has been made by the two international conferences at the Hague in 1899 and 1907. By the conference of 1899 nations were authorized to offer their good offices and mediation between sovereignties whose relations were strained, without having the offer considered as an unfriendly act. Next, provision was made for a commission of inquiry to ascertain the facts of an international difficulty. Third, a court of international arbitration was provided, to be resorted to whenever an international controversy may arise. Agreements were also framed to ameliorate the sufferings of war upon land and upon sea.

The second conference of 1907 embraced a greater variety of subjects and strengthened the conventions agreed upon in the first conference. Contract debts could not be collected by force; hostilities between nations must not commence without notice; neutrals must not be subjected to the burdens of war until they have been fully notified; the rights and duties of neutral powers in case of warfare are more clearly defined; the placing of submarine mines was regulated; a proposition was considered for the establishment of an international prize court; another conference at the expiration of eight years was agreed upon.

In the constitution of an arbitral court the first requisite is that

it should be permanent. However cordial the acceptance of the general principle of arbitration may be, any plan which does not afford ready access to an established tribunal is more or less of a makeshift. The judges constituting this tribunal should be selected from men of the highest reputation for judgment and probity, and with all possible assurance that in rendering decisions they will not be influenced by national partialities or interests. It is believed that reliance may be placed upon the good faith of the respective governments in selecting men of the highest character and ability. The members should receive compensation from the general body of nations agreeing to submit their controversies to the international court.

They should in a degree detach themselves from the countries to which they belong and devote themselves to the administration of justice in accordance with principles which will deserve universal acceptance. Their devotion should be given to the interests of humanity in general as distinguished from more isolated local or national interests. The enforcement of their judgments should be secured by the general action of all countries which agree to submit their controversies to the court.

Two methods have been employed in arbitrations. The first and most common is that under which each of the contending countries has a representative among the members of the court. This method, while frequently resorted to, fails to reach the highest standard of international justice. It has a semblance of diplomacy and does not entirely meet the requirements of judicial decision.

The second is by the selection of a court exercising the functions and adopting the methods of an ordinary judicial tribunal.

In the appointment of the judges it would secure greater confidence to give each concurring nation the privilege to name one member.

Every system which looks to the enforcement of justice between individuals or nations must be one of gradual development. In the early stages of such development it is probable that the countries submitting their disputes for settlement would prefer to select from the whole list a limited number of judges for the decision of their

controversies. It is evident, however, that under a more perfect realization of the plan the judges would be selected in some other way, perhaps by the choice of the whole body of judges and in making a selection it is to be hoped that considerations of fitness alone would prevail.

While it is desirable that each nation be represented in the list, thereby insuring the presence of judges familiar with different systems of jurisprudence and of language as well as representation from different portions of the earth; yet equal pains should be taken to prevent the tribunal from acting as a mere political body.

Propositions have been made for an appeal from the judgment of the limited number of judges, constituting the tribunal of arbitration, to the general court. Such propositions may be rejected because an element of uncertainty would be injected into every controversy and the final decision would be likely to be influenced by political rather than by judicial considerations.

Whether it is desirable that such a tribunal should, as part of their duties, frame a code of international law has been much discussed. It is certainly desirable to withdraw from the domain of uncertainty the greatest possible number of troublesome questions. On the other hand, it is clear that controversies would arise in which the decision could not be determined in accordance with any code and in which it would be necessary to rely upon the judgment of the court.

In the selection of judges and the whole framework of the plan, the greatest care should be taken to secure equal representation and equal rights for all concurring nations, great or small, strong or weak. This is absolutely fundamental and at the very basis of the enforcement of rights whether between individuals or nations. This does not mean, however, that every nation would have equal influence in the tribunal. The comparative influence of each would be determined, it must still further be said, by the intelligence of the respective members, and by the degree of confidence in their judgment.

The powers of such a tribunal would necessarily be limited at the beginning. In a majority of the numerous arbitration treaties already negotiated, questions of national honor and of vital interest have been reserved from decision. With the growth of an international senti-

ment for peace and with an increasing confidence in the decisions of the tribunal a larger number of questions would be withdrawn from the domain of national honor and vital interest, and freely submitted to arbitration. Every factor which goes to make up modern progress and civilization will stimulate the desire for the orderly and peaceful adjustment of international controversies.

Since the year 1815 more than two hundred controversies have been submitted to arbitration for settlement. In the list of those resorting to this method there have been included not merely the more advanced nations of the earth located in every grand division of the world, but such countries as Turkey, Persia, Afghanistan, and Santo Domingo. These arbitrations have included a great variety of the most vexing controversies and have been settled, if not to the general satisfaction of those countries which have submitted their disputes, at least with general acquiescence.

The method heretofore employed as a last resort in settling international controversies has been by war. There has been a tendency running through the centuries to eliminate the causes of war. The incursions by barbarian forces, as in the time of the Goths and Huns, are no longer possible. Science has become the handmaid of war. The barbarous horde would realize that it must come into collision with discipline and with resources. No barbarian tribe would now attempt to take a civilized country, unless influenced by the temerity of ignorance or by despair. They may occupy inaccessible fastnesses or be protected by pestilential climate, but this cause of war, the crowding of an uncivilized nation upon a civilized, has entirely disappeared. These wars, at least between branches of the Christian church, have ceased. They practically terminated with the peace of Westphalia in the year 1648. This does not mean that religious differences are not an aggravating feature in any conflict, but this great source of conflict has been done away with, at least between Christian nations, and what collisions may have a religious phase are those with pagan and Mohamedan, under the influence of their rulers.

Wars for the aggrandizement of sovereigns, as in the case of Louis XIV, have disappeared. This is no longer possible. If an ambitious monarch should seek for his own personal aggrandizement to

begin war, if he did not find an obstacle in his own country, it would certainly appear from the concert of other nations. Armed conflicts for a greater degree of freedom, for equality — such an uprising as our American Revolution — though not entirely a matter of the past, are not as frequent as formerly, because by more peaceful methods of agitation, by the gradual growth of public opinion, the greater privileges and equality which are sought in larger freedom of the individual can be obtained in an easier and a readier way. The wars which were prompted by a desire of European sovereigns at the beginning of the last century to reimpose a dynasty which had been expelled may be regarded as a matter of the past.

So, in another movement for an arbitral court, those who labor for it are laboring along with forces that have been powerfully at work for centuries and never more powerfully at work than now. It is to be hoped, indeed, I feel that we may hope confidently, that a growth of a spirit of justice, of an enlightened public opinion, of an intelligence, which has built up a great system of municipal law and made it to prevail among all the civilized nations of the earth, will in an infinitely shorter period create a system of international law and tribunals to which all disputes between nations may be submitted.

Mr. Roor. I hope to have the pleasure of listening now to Hon. A. J. Montague, former governor of Virginia.

ADDRESS OF MR. A. J. MONTAGUE,
OF RICHMOND, VA.

Mr. President, and Gentlemen of the Society. The supreme court is fundamentally and largely a tribunal of international justice. "From the very nature of things," says Webster, "and the frame of the Constitution, it forms the point at which our different systems of government meet in collision, when unhappily collision exists. By the absolute necessity of the case the members of the supreme court become judges of the extent of constitutional powers. They are, if I may call them, the great arbitrators between contending

sovereignties." Pinkney was moved to exult "upon the proud spectacle of the peaceful judicial review of these conflicting sovereign claims by this more than Amphictyonic Council;" and Horace Binney declared the court to be "the greatest moral substitute for force in controversies between the people, the States and the Union." Similar expressions of appreciation are found in the *Federalist*. Moreover, the jurisdiction of the court of controversies to which the United States, the states or foreign nations shall be a party, as well as its many adjudications interpreting the law of nations, conclusively establish its character as an international tribunal.

Publicists and jurists of other lands have also recognized the lofty status of this court. DeTocqueville says, "In the nations of Europe, the courts of justice are only called upon to try the controversies of private individuals; but the Supreme Court of the United States summons sovereign powers to its bar." Sir Henry Maine considered it "not only the most interesting, but a virtually unique creation of the founders of the Constitution." Lord Brougham esteemed it "the very greatest refinement of social policy to which any state of circumstances has ever given rise, or to which any age has even given birth." And John Stuart Mill declared the court "the first example of what is now one of the most prominent wants of civilized society, a real International Tribunal." Consequently it would not be inaccurate to affirm that the supreme court is the most distinctively international court the world has thus far seen, and to assert that no new court of international justice, even though of the amplest possible jurisdiction and dignity, could fail to study, without injury to itself, the birth, character, growth, and working of this approved model of judicature.

The history of the evolution of the supreme court demonstrates that it was largely intended to supersede the clumsy arbitral methods provided for in the Articles of Confederation. Arbitration under that compact had not proved acceptable. Of some six cases only one ever developed an opinion from the Commissioners, that of *Pennsylvania v. Connecticut*. The failure of this tribunal was, however, due to the nature of the plan of arbitration itself. Submission to its jurisdiction was not compulsory, for the Congress reserved the

right to withhold authorization of the commission. Then the arbitrators were not chosen in advance of the submission of the controversy; they were appointed by the litigants, or, upon their failure so to do, the selection was made by a sort of chance; thus never satisfying the parties or appealing to the confidence or imagination of the people. In short, the tribunal contemplated by the Confederation was political and not juridical, hence its failure to survive.

While arbitration has, from time to time, been a happy temporary substitute for judicial tribunals, this mode of determining, *in pais*, private controversies has seldom proved satisfactory, has not been largely employed, and has not, unfortunately, materially lessened private litigation. The fatal infirmity of this method of trial is inherent in the object and mode of selecting the members of the commissions. The creators of all arbitrations will inevitably strive to name members favorable to their interests. True judges should never arise out of the controversy; and the case should never await the judges, they should ever await the case. Burke has wisely said: "What ever is supreme in a State ought to have, as much as possible, its judicial authority so constituted as not only to depend upon it, but in some sort to balance it. It ought to give security to its justice against its power. It ought to make its jurisdiction, as it were, something exterior to the State." Tested by this illuminating standard it must be confessed that arbitration subordinates this superior and exterior power, while the juridical method conserves and amplifies it.

In the Convention of 1787, the proposal to retain and incorporate in the Federal Constitution the ninth article of the Confederation respecting arbitration was unanimously rejected; and, to show the temper of the convention in pursuit of the juridical ideal, a proposal was also defeated to give the supreme court, in conjunction with the executive, revisory powers over legislative enactments.

Early in its life the court indirectly but plainly disapproved of the performance by the judiciary of certain executive duties imposed by Congress for the administration of the pension laws; and, shortly after, the court also declined to comply with Washington's request

for a judicial construction of the French treaty in connection with Genet's conduct. And, likewise, did the court refuse to intervene in the matter of "Dorr's Rebellion," upon the ground that the question involved was political and not judicial. The action of the court, in these instances, however, meant more than the mere disposition of jurisdictional questions; it meant the divorce of the court from all participation in politics or in the administration of any other department of government. But it might be added, that the separation of the three cardinal departments of government largely contributed to the attainment of this juridical isolation by confining the exercise of the judicial power within a more rigid orbit.

These precedents are striking instances of the saving virtue of that juridical detachment which the arbitral court may find occasion profitably to follow, though of course its jurisdiction must necessarily trench upon the domain of politics. But the impressive lesson of our experience is found in the contrast of arbitration under the Confederation with the juridical method under the Constitution, the weakness of the former and the vigor of the latter, thus disclosing the transcendent opportunity and mission of the arbitral court.

Sir Frederick Pollock believes the law of nations to consist of "those customs and observances in an imperfectly organized society which have not fully acquired the character of law, but are on the way to become law." This definition will answer my immediate purpose. I should say, then, that for the improvement of this organization we should develop a more clearly defined system of international jurisprudence; and, in perfecting such a system, what could be more potent than the administration of international justice by an international court? Justice, international as well as national, must grow step by step, and the chief factors of this growth are the formulated opinions of a great court upon adjudicated facts, building instance upon instance, and precedent upon precedent, thus evolving a system of law from continuous usage or custom. The administration of justice makes law, as often as the law makes administration; each acts and reacts upon the other. In interpreting treaties; in determining differences between nations; in adjusting frictional controversies, such as the blowing up of the Maine, and

the Dogger Bank incident, the arbitral court might well take as a model the dignity, impartiality and force of the opinions of the supreme court, thereby powerfully improving and developing the "customs and observances" of nations into an ordered system of jurisprudence.

The moral elevation and judicial isolation of the supreme court are largely attributed to the mode of appointing its justices, who are not chosen by popular clamor, or in the intrigues of the caucus, or through the stratagems of legislators, but by an enlightened, responsible executive, "by and with the advice and consent" of a group of statesmen, trained by the traditions of juridical usage and ideals. An analogous mode of appointment of the arbitral court should be considered by the signatory nations. Could not these sovereignties find a method equally free from diplomacy, and equally detached from national considerations? The various forms of the governments concerned necessarily preclude a uniform mode of appointment; but a uniform principle of selection, elevated and practicable, could be devised, and should be devised, if the arbitral court is to be a success. Is it not expedient for the executives of the interested nations to select, by and with the advice and consent of their highest courts of judicature or their upper legislative branches, such jurists as are needed to administer this court? Could not the method of appointment of the supreme court be adopted, *mutatis mutandis*, by the several powers? Indeed, is it not vital to the very origin and life of the arbitral court to adopt the principle which is used in the selection of members of the supreme court? It is regrettable, however, that this principle of appointment should already be embarrassed by an expression in the second article of the Convention of a preference for the selection of the members of the first arbitral court from the panel or list of eligibles of the permanent tribunal of arbitration.

Two great elements in the stability of our supreme court are the fixed minimum compensation and the life tenure of its justices. The measure of this compensation might well be followed in the arbitral court, for while the principle of a fixed compensation is therein prescribed, its practical exemplification is inadequate. The triumphant

arguments of Alexander Hamilton upon the tenure of office of members of the supreme court during good behavior have been vindicated by the experience and success of that tribunal, and these arguments might appropriately be renewed if they were not rendered irrelevant by the conclusion of the Hague Convention on this subject. But the stability of the supreme court is not inflexible; the power of impeachment of the justices is reserved. Of course, this method of removal could not and should not be employed by the signatory nations; for it is manifest that a request by any government for the removal of a member of the arbitral court, the request to contain the alleged grounds of unfitness, would afford ample remedy.

The number of justices of the supreme court is not fixed by our organic law, but it is quite certain that this number will never be so enlarged as to render the court an assembly of jurists or a parliamentary body. Perhaps its present number is final. However, the reasons which have determined this number could be advantageously considered in arriving at the number of members of the arbitral court; and it is to be hoped that similar considerations may forbid so bulky an organization as to make it an unworkable court. The difficulties surrounding this question are most complex, but a study of the origin and experience of our court will supply an illuminating precedent.

Perhaps the system of procedure in the supreme court for the trial of causes of both original and appellate jurisdictions can not be followed by the arbitral court, yet the simplicity and precision of our pleadings, the completeness of the record, the orderly arrangement of the trial or hearing, and the method of arriving at a judgment and opinion in conference, is no mean model for any tribunal in the world.

In the mode of the enforcements of its judgments the arbitral court will find no discouragement in the experience of the supreme court in satisfying without force its judgments or decrees against the states. In the case of the sloop *Active* force was employed against the state of Pennsylvania for the collection of the judgment of the supreme court, and this is perhaps the only instance in the life of this court. All other judgments or decrees against the states

have been voluntarily met in response to the moral compulsion of the supreme court. It is true that the supreme court can command all the force necessary for the enforcement of its judgments, while the international sheriff or constabulary will be long unknown to the arbitral court; nevertheless, the experience of the supreme court must give great comfort to those who believe that the mandates of the arbitral court will receive ready and voluntary satisfaction by the nation against whom directed.

I need not accentuate the advantages of the regular sessions of the supreme court as an example for the arbitral court. Periodic sessions is an inherent and elementary attribute of any judicial tribunal, which essential must have been potential in effecting the convention establishing the arbitral court. That justice may be ready, free and continuous, requires a fixed time and place for its administration. The absence of this element of judicial administration has been one of the most palpable infirmities of arbitrations, and it is to be hoped that there may not be such repeated use of the judicial committee prescribed by the Convention as an adjunct of the arbitral court as to interrupt its functional continuity. I am rather apprehensive of a too frequent substitution or intervention of this committee. The probable size of the court, and the insignificant compensation of its members, would seem to necessitate an unfortunately recurrent exercise of the powers of this committee. Our supreme court could hardly have achieved its success under such a method of ancillary or auxiliary administration.

The arbitral court will find a most helpful precedent in the manner in which the supreme court has administered various systems of jurisprudence. The common law and the chancery system of England, with the material statutory changes or modifications obtaining in the several states, and the Roman law, together with the modifications wrought in that system by Spain, France and Louisiana, have all been considered and administered from time to time with facility and success. These several systems have not been incompatible with the form of the procedure of the supreme court. Indeed, through the operation of our supreme judicial crucible these differing laws have come to wear a strong and sure likeness which

would seem a harbinger of that complete jurisprudence to be evolved by the arbitral court into a soldered system of international equity.

The opinions of the supreme court upon many subjects of international law, private and public, must be profoundly instructive to the arbitral court. Beginning with *Ware v. Hylton* in 1796, involving rights asserted under the British Treaty of 1793, down to *Missouri v. Illinois*, in 1905, where the controversy, if occurring between more independent sovereigns, might have been a *casus belli*, the supreme court has had to pass upon questions of prize, neutrals, belligerents, privateering, letters of marque and reprisal, contraband, blockade, and that congeries of controversies between the states. In this sphere of politico-jurisprudence the judgments of the court have met with universal commendation, unless we except *Rose v. Himeley*, in which the court declared the right to examine the jurisdiction of a foreign court, and to disregard its sentence of condemnation if contrary to the law of nations, and which has subsequently been overruled by an unbroken line of decisions. Indeed, the extraordinary success of the supreme court in this delicate and difficult field of jurisprudence should be an effective inspiration for the exercise of similar judicial power by the arbitral court.

The arbitral court has jurisdiction concurrent with that of the permanent court of arbitration. Choice of access will thus be afforded the august litigants, and valuable comparisons can thus be instituted. The tribunal is likely to survive which supplies the better administration, and the American experience is sure to predict a survival of the juridical method. But the excellence of systems is adequate for the successful administration of any human institution. The personal equation, therefore, presents the supreme problem, the ever recurrent manicheism of the task. Can there be secured for the arbitral court trained jurists of the requisite character and capacity? Jurists with the genius of personal detachment from all national and racial environment, and with courageous and inflexible adherence to the line of judicial duty? If this can be done, the work is already well done. In this winnowing of men does the personnel of the supreme court afford a standard? This court needs no fervent advocacy or pliant assentation. Mistakes in its

appointments have sometimes been made. But if the arbitral court can obtain a membership of jurists of the like order of those who have for over a hundred years administered the judicial power of the supreme court, then it is not too much to predict that the international jurisprudence of the future will be an expanding influence and a commanding power among nations for the settlement of their controversies in a manner creditable and beneficial to the human race. This prediction is no audacious fancy if only the arbitral court will do for the family of nations what the supreme court has done for the family of states.

[At 10.52 General Horace Porter took the chair.]

The CHAIRMAN. This topic is now open for discussion, gentlemen, and we shall be glad to hear any remarks on the subject.

Mr. THEODORE P. ION, of Boston, Mass. I do not have any special remarks on the subject, except one. The object of this Society of course is always to promote peace by developing international law. The second speaker, I think, told us that now, as far as we see, war does not exist as in olden times, and he brought up a good many examples. But, war continues, or a combination of things worse than war, in the Ottoman Empire as it was before.

As this Society is going to close to-day — which is a pity — I would propose a resolution of sympathy for the people and the relatives of the people who have been maltreated in the Ottoman Empire — I refer to the recent massacres — and I propose that this resolution be sent to the President of the United States, with the hope that the President will urge upon the European powers the advisability of taking more effective measures of securing peace in that part of the world. This is only an academical resolution on my part, but I am sure that this resolution would have some kind of moral effect upon the European societies and that they might imitate us.

Mr. F. W. AYMAR. I move that the resolution be sent to the Executive Council for action.

The CHAIRMAN (Mr. Porter). You have heard the motion and the proposition that the subject may be referred to the Executive Council for consideration and action. Are you ready for the question?

Mr. J. P. MERRELL. I make the suggestion that there is no second to the motion. The motion is not before the house.

Mr. J. W. MACK. I second the motion.

The CHAIRMAN (Mr. Porter). Those in favor say aye; (after a pause) those opposed, no. It is carried.

Mr. N. W. HARRIS, of Evanston, Ill. I am sure we are all very much impressed with the paper just read, and that these discussions have brought us very much closer to the point of view which I think all persons interested in international law should reach with regard to an international tribunal, and I believe this last speech of Mr. Montague's ought to be read by every person in Europe who is interested at all in the establishment of a proper tribunal for the solving of questions in dispute between states.

The suggestion yesterday by Mr. Root with regard to the selection of judges by, I believe, Venezuela and the United States, three judges to be selected for the tribunal from a list of judges which is now held at The Hague, these judges to be selected from entirely nonpartisan members — having nothing to do either with this country or with Venezuela — is a very great step in the direction of the tribunal suggested by Mr. Montague, and I think the ultimate goal to which we should direct our efforts is a nonpartisan tribunal, a tribunal organized and developed on the basis similar to our own supreme court of the United States. Then, we can really hope to reach a position where disputes can be settled on the merits of the questions, in a way satisfactory to all concerned, and from an entirely judicial and legal standpoint.

With regard to the question so much discussed yesterday, I would like to make one or two remarks, that is, the question of a political offense: I believe that the Rudovitz case was referred to in a

number of instances — I might almost say misquoted, because only one side of it seemed to have been given. But there is one very vital fact with regard to the Rudovitz case which — if I am not mistaken — I believe was one of the most important elements in influencing the Department of State in passing the judgment which it did, and that was this: that the Rudovitz case was really connected with an extensive revolutionary movement in Russia. This was made light of in one of the papers yesterday; and it was intimated at the same time that there could be no revolution, except when two political parties were contending forcibly for the control of the government. This would limit the range of "political crimes;" but it does not adequately define them. It ought to be possible, in time, to agree upon some fundamental basis upon which to decide such a question judicially. Every one admits, of course, that it is extremely difficult to decide just exactly what a political offense is, but we may sum up some of the things which can be used in such a definition as that. In the first place, there must be a general revolutionary movement, of large extent — wide spread;¹ then those persons who are carrying on this revolutionary movement must be organized. The party to which Rudovitz belonged — the Social Democratic Labor party — was thoroughly organized and carrying on its operations over a wide area.

Then it must be conducted in the manner that all nations would recognize as legitimate and regular. When an organization carries on its work in this way, its members can not be punished as ordinary criminals; and Rudovitz was carrying out instructions given to him in a regular way, and belonged to an organized movement. In such a case, of course, his act would not be considered other than a political offense. Another thing, all efforts of this kind must be directed against the government; if it is directed against an individual at all, it would not be a political crime. It must be directed against the government or some representative or a spy, or even a regular official of the government. There are many cases in this

¹ It was my intention to define the term "wide spread," as sufficiently extensive to exclude the plots of a group or club of Anarchists, or "Black Hands," and the acts of isolated bands bent on plunder, robbery, and arson. — N. D. H.

country to which we could refer where acts of violence were directed against individuals. Take the case of Lovejoy, whose death was a pure crime — a horrible act of cruelty against a man who was doing nothing more than talking against slavery — and where there was no connection at all with any political movement. But in this Rudovitz case there was a direct connection with a political organization. Then, we find in the case of the Russian government, that it was resorting to things which a government would not resort to ordinarily, such as sending troops out to kill the agitators, to torture the people, in order to find out who were concerned as leaders in the revolution, and in that way to destroy them. The deeds of Rudovitz and his associates were, then, acts of retaliation by an organization which had no other effective means, perhaps, of retaliating against the government and bringing pressure to bear upon the government, that its own work might progress. Therefore, for those reasons, I believe that a political offense may be fairly defined to be one that is connected with a wide spread revolutionary movement, that is, committed as an incident of the struggle or at the instigation or order of an organized body whose acts are conducted for the chief part in a manner legitimate and regular, and that is in opposition to a regular government or its representatives.

The CHAIRMAN (Mr. Porter). The topic for discussion before the body is "the equality of nations." Professor Kirchwey is unavoidably absent, and Mr. Frederick C. Hicks will be invited to read a paper on that subject — I do not mean as a substitute to the gentleman I mentioned, but the other gentleman who is first on the list not being present, it is now in order for Mr. Hicks to read his paper.

ADDRESS OF MR. FREDERICK C. HICKS,
OF BROOKLYN, N. Y.

Mr. Chairman, and Gentlemen of the Society. For almost three centuries writers on international law have included among fundamental principles the juristic equality of states. "All sovereign states," they say, "without respect to their relative power, are, in